

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

JOHNNY THOMAS,)
Plaintiff,)
vs.)
HY-VEE, INC.,)
Defendant.)

8:06CV511

ORDER

On April 24, 2007, the court conducted a telephonic hearing on the motion of David Nich for leave to withdraw as plaintiff's counsel (Filing No. 38). Mr. Nich appeared for the plaintiff. Jeannie M. DeVeney appeared for the defendant. The court notes that the plaintiff's deposition is set to be taken on April 25, 2007 in Omaha. The parties, at this time, do not request an extension of the Progression Order deadlines. As discussed during the telephonic hearing, the court finds that the motion should be granted.

Plaintiff, Johnny Thomas, will be deemed to be proceeding pro se as of the filing of this Order. Plaintiff is cautioned that failure to comply with this order may have very serious consequences. Rule 37 of the Federal Rules of Civil Procedure provides an array of sanctions a court may impose for a party's failure to cooperate in discovery or failure to appear for deposition. These sanctions include payment of costs and attorney's fees and/or dismissal of the action.

IT IS ORDERED that the motion of David L. Nich Jr. for leave to withdraw as plaintiff's counsel (Filing No. 38) is granted, as follows:

1. The Clerk shall terminate the appearance of David L. Nich Jr. as counsel for the plaintiff and shall enter the plaintiff's appearance, pro se.

2. Plaintiff, Johnny Thomas, may retain substitute counsel at any time; however, until such time as substitute counsel enters a written appearance, Mr. Thomas shall personally comply with all orders of this court, the Federal Rules of Civil Procedure, and the Local Rules of Practice. Failure to comply with these requirements may result in the imposition of sanctions, including the sanction of dismissal, pursuant to Rule 37 of the Federal Rules of Civil Procedure.

3. Plaintiff, Johnny Thomas, is hereby ordered to appear for deposition, as scheduled, on Wednesday, April 25, 2007 at 9:00 a.m. at the offices of Spencer Fane Britt & Browne LLP, 9420 Underwood Avenue, Suite 200, Omaha, Nebraska. Failure to appear may result in the imposition of sanctions, including the sanction of dismissal, pursuant to Rule 37 of the Federal Rules of Civil Procedure.

4. Plaintiff, Johnny Thomas, shall keep the court advised of his current address and telephone number at all times while this case is pending.

5. David L. Nich Jr. shall, forthwith, provide a copy of this Order to plaintiff, Johnny Thomas, and shall timely file a certificate of service showing compliance with this paragraph.

DATED this 24th day of April, 2007.

BY THE COURT:

**s/ Thomas D. Thalken
United States Magistrate Judge**